

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Criminal No. 3:90-48(2)(DSD)
Civil No. 15-105(DSD)

United States of America,

Plaintiff,

v.

ORDER

Andrew Jerome Bigbee,

Defendant.

Nathan P. Petterson, Assistant U.S. Attorney, 300 South
Fourth Street, Suite 600, Minneapolis, MN 55415,
counsel for plaintiff.

Andrew Jerome Bigbee, #04727-041, USP Leavenworth, P.O.
Box 1000, Leavenworth, KS 66048, pro se.

This matter is before the court upon the pro se motion by
defendant Andrew Jerome Bigbee to alter or amend the court's order
denying his requested relief under 28 U.S.C. § 2255. Based upon a
review of the file, record, and proceedings herein, and for the
following reasons, the court denies the motion.

The background of this action is fully set out in the court's
order dated April 2, 2015, and the court will not repeat it again
here. Bigbee argues that he is entitled to relief under Federal
Rule of Civil Procedure 59(e) because the court erred in not
granting an evidentiary hearing and in failing to issue a
certificate of appealability.

"A district court has broad discretion in determining whether
to grant or deny a motion to alter or amend judgment pursuant to

Rule 59(e)"¹ United States v. Metro. St. Louis Sewer Dist., 440 F.3d 930, 933 (8th Cir. 2006). "Rule 59(e) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence." Id. (citation and internal quotation marks omitted). In other words, "[s]uch motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment." Id. (citation and internal quotation marks omitted). Bigbee is not entitled to relief under Rule 59(e) because he merely restates the issues raised in his § 2255 motion. Further, the court concludes that the order is free of manifest errors of fact or law.

Accordingly, based on the above, **IT IS HEREBY ORDERED** that the motion to alter or amend the judgment [ECF No. 106] is denied.

Dated: April 22, 2015

s/David S. Doty
David S. Doty, Judge
United States District Court

¹ It is unclear whether the court has jurisdiction to entertain this motion because Bigbee filed an appeal the same day he filed the instant motion. See Janousek v. Doyle, 313 F.2d 916, 920 (8th Cir. 1963) ("[T]he filing of a timely and sufficient notice of appeal operates to transfer jurisdiction of the case to the court of appeals, and after such filing the district court is without jurisdiction to proceed further in the case"). The court will nevertheless consider the motion.